



November 4, 1999

Ms. Lillian Guillen Graham
Assistant City Attorney
City of Mesquite
P.O. Box 850137
Mesquite, Texas 75185-0137

OR99-3125

Dear Ms. Graham:

You ask whether certain information is subject to required public disclosure under the Texas Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 129253.

The City of Mesquite (the "city") received a request for certain incident reports. You state that the city has no records responsive to the request for reports regarding a possible kidnapping of a certain individual. You assert that portions of the requested information are excepted from required public disclosure based on sections 552.101, 552.103 and 552.108 of the Government Code.

You assert that section 552.101 applies to the two reports at tabs 3 and 6 of your submissions.¹ Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 261.201 of the Family Code reads in part as follows:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

¹The sixth report has no tab, but we assume it to be the report you reference at tab 6.

- (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and
- (2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

We believe that the two reports consist of reports, records, and working papers used or developed in an investigation made under chapter 261 of the Family Code. Because you have not cited any specific rule that the city has adopted with regard to the release of this type of information, we assume that no such regulation exists. Given that assumption, the two reports are confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 (1986) at 2 (construing predecessor statute). Accordingly, the city must withhold these reports in their entirety. Gov't Code § 552.101.

Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Based on the information you provided, we understand you to assert that the requested information pertains to cases that concluded in a result other than conviction or deferred adjudication. However, section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App. --Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, with the exception of the basic front page offense and arrest information, you may withhold the requested information from disclosure based on section 552.108(a)(2).

Section 552.103 of the Government Code excepts from disclosure information that relates to pending or reasonably anticipated litigation to which the governmental body is a party. You assert that the information relates to reasonably anticipated criminal litigation because the statute of limitations for prosecuting the cases has not expired. We find that the city has not established that the city will be a party to criminal litigation pertaining to the offense reports or that any litigation concerning the reports is reasonably anticipated. *See* Open Records Decision No. 518 (1989). Therefore, the city may not withhold the basic information from disclosure based on section 552.103.

In summary, the city must release to the requestor the basic information in the offense reports in the city's submissions at tabs 4 and 5. The city may withhold the remaining information in the reports at tabs 4 and 5 based on section 552.108(a)(2). The city must withhold from disclosure the reports referenced at tabs 3 and 6 based on section 552.101.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



Kay H. Hastings
Assistant Attorney General
Open Records Division

KHH/ljp

Ref.: ID# 129253

encl. Submitted documents

cc: Ms. Denise Barnett
391 VZ CR 3501
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(~w/o enclosures)

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